

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1297 of 1999

with

CIVIL APPLICATION NO.10981 OF 1999

in

SPECIAL CIVIL APPLICATION No 396 of 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

JYOTIBEN RAMESHBHAI JOTWANI MOTHER OF DETENUE BIPIN @

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Appellant

NOTICE SERVED BY DS for Respondent No. 1, 2, 3

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: 12/10/1999

ORAL JUDGEMENT

(per THAKKAR, Actg. CJ)

1. This appeal is filed against the judgment and order, dated 16.8.1999 passed by the learned single judge in Special Civil Application No.346 pf 1999.

2. The appellant was the original petitioner. By order dated November 30, 1998 the detenu was detained by the respondeat No.1-Commissioner of Police in exercise of powers under section 3 of Gujarat Prevention of Antisocial Activities Act, 1985(hereinafter referred to as "the Act"). Grounds of detention were supplied to the detenu on the same day inter alia alleging therein that with a view to preventing him from acting in a manner prejudicial to the maintenance of public order it was necessary to detain him and accordingly the order of detention was passed. It was also mentioned that one case was registered against the detenu for offences punishable under Sections 66(B), 65(E) read with Section 81 of the Bombay Prohibition Act. As per the allegations, on May 10, 1998, the detenu was found in possession of 116 bottles of foreign liquor as well as beer worth Rs.24,100/- in his Maruti van. The said case was pending in the competent court. Two statements were also recorded wherein certain anti-social activities of the detenu were highlighted and it was stated that both the witnesses have informed the authorities that if their names and addresses are disclosed their life would be in danger and hence they requested the authorities not to disclose the names and particulars of the witnesses. On the basis of above fear expressed by the witnesses their names and particulars were not disclosed and the power of privilege was exercised under sub-section (2) of section 9 by the detaining authority.

3. The learned single judge was of the view that in the facts and circumstances of the case it could not be said that the subjective satisfaction was vitiated. According to learned single judge, the activities of the detenu affected the public order. Hence, the order of detention passed against the detenu was legal and valid. Regarding non-supply of report of the Chemical analyser the learned single judge observed that since the liquor was not sent to the Chemical analyser there was no question of supply of report.

4. Various contentions were raised by the learned counsel for the appellant at the time of hearing of this appeal. In our opinion, however, it is not necessary to enter into larger question in view of the fact that the

contention regarding non-supply of particulars of witnesses whose statements have been recorded and placed before the detaining authorities was contrary to law and the detenu was thereby deprived of his right to make effective representation under Article 22(5) of the Constitution of India. Looking to the grounds of detention as also the verification and endorsement made by the detaining authority it is clear that the detaining authority did not apply his mind as to why names and other particulars of witnesses should be withheld.

5. As held by the Division Bench of this court in Bai Amina vs State of Gujarat 22 GLR 1186 as affirmed by the Full Bench of this Court in Chandrakant Patel vs State 1999 (1) GLR 761, such particulars must be supplied to the detenu. In the instant case, there is no satisfaction recorded by the detaining authority and hence the satisfaction was vitiated.

6. Only yesterday (11.10.99), we had dealt with in detail the above argument on behalf of the learned counsel for the detenu in Letters Patent Appeal No.1291 of 1999 and after considering relevant case law on the point, we held that there must be contemporaneous record for formation of opinion or satisfaction regarding withholding of names and material particulars from the detenu. If it is not so, subjective satisfaction will stand vitiated.

7. For similar reasons, this Letters Patent Appeal deserves to be allowed. In the instant case also though none of the witnesses had stated that there would be danger to his life and property and even though it is not stated in the grounds of detention by the detaining authority in affidavit-in-reply, the detaining authority has stated that he was fully satisfied that if the names and material particulars of the witnesses would be disclosed to the detenu "their lives and properties would in danger". Since none of the witnesses had stated regarding danger to property nor the detaining authority himself has stated in the grounds of detention the said fact was added subsequently while filing affidavit in reply and on that ground also, the subjective satisfaction is vitiated.

8. For the foregoing reasons, this Letters Patent Appeal deserves to be allowed and is accordingly allowed. The order passed by the learned Single Judge is set aside. The order of detention, dated 30.11.1998 made by the Commissioner of Police, Ahmedabad City is hereby

quashed and the appellant-detenu is ordered to be set at liberty forthwith if his presence is not required in any other case.

9. In view of order on Letters Patent Appeal, no order on Civil Application No.10981 of 1999. No costs.

...